Local Union 1447, Sign-Pictorial and Displaymen, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO (United Exposition Service Co., Inc.) ***and*** **Martin J. Sobol.** Case 4–CD–795

July 19, 1991

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

The original charge in this Section 10(k) proceeding was filed on October 19, 1990, and an amended charge was filed on November 29, 1990, by Martin J. Sobol, alleging that the Respondent, Local 1447, Sign-Pictorial and Displaymen, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO (Decorators) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Carpenters District Council of South Jersey and its Local 623, a/w United Brotherhood of Carpenters and Joiners of America, AFL–CIO (Carpenters). The hearing was held January 9 and 18, 1991, before Hearing Officer Henry R. Protas.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a corporation with its principal place of business in Chicago, Illinois, and an office in Atlantic City, New Jersey, is engaged in the business of servicing conventions, expositions, trade shows, and special events for associations and show managers. The Employer's Atlantic City, New Jersey location has provided services valued in excess of $50,000 directly to customers located outside the State of New Jersey, and has purchased supplies valued in excess of $50,000 directly from suppliers located outside the State of New Jersey. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Decorators and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer receives exhibits and displays destined for conventions or trade show sites from customers, takes them from their shipping containers, assembles them, erects them, and dismantles and repacks them. It also rents pipe and drape booth equipment, tables and chairs, carpets, and decorative items. The Employer has a maintenance shop for the repair and assembly of its rental equipment.

In the Atlantic City area, trade shows and conventions are held in one of many hotels or the Atlantic City Convention Center. At events held at the hotels, most exhibition companies assign the erecting and dismantling of displays and exhibits to employees represented by the Decorators. The Employer uses employees represented by the Decorators and employees represented by the Carpenters. As the exhibits and displays in large part are prefabricated, erecting and dismantling them generally requires nothing more than screwdrivers, wrenches, drills, and clamps to tighten panels together with screws, bolts, and wingnuts.

The dispute began when the Employer was hired by ENESCO to install and dismantle its exhibits for a trade show to take place in January 1989. At the specific direction of the customer, the Employer hired employees represented by the Carpenters to perform the work. The Employer was hired for the same work by ENESCO for a show in January 1990. This time, however, the customer directed the Employer to utilize employees represented by the Decorators. The Carpenters protested the assignment and a settlement was reached whereby employees represented by the Carpenters were assigned the dismantling work.

In response to the Employer's assigning the erecting and dismantling work to employees represented by the Decorators on subsequent jobs, the Carpenters filed a series of grievances dating from January 1990, through September 1990. By letter dated October 11, 1990, the Decorators informed the Employer that it was aware that there had been discussions between the Carpenters and the Employer concerning the disputed work. The letter claimed that the assignment of this work to anyone other than employees represented by the Decorators was a violation of their contract and threatened to respond to any such violation with action up to and including a work stoppage. At present, the Employer claims to assign the erecting and dismantling of exhibits and displays to employees represented by the Decorators in accord with its preference.

[1] On May 28, 1991, the Carpenters filed a motion to reopen the record for the purpose of introducing testimony in an unrelated pending case which the Carpenters assert supports its contention that the award of work in the instant case should be limited to work performed by the Employer, and not cover the entire Atlantic City area. In view of our finding below that our award is limited to jobs performed by the Employer, we find it unnecessary to pass on the Carpenters' motion because the testimony sought to be introduced would have no effect on the result.

B. *Work in Dispute*

The disputed work involves the erecting and dismantling of exhibits and displays by the Employer in the Atlantic City, New Jersey area, except for that performed at the Atlantic City Convention Center.[2]

C. *Contentions of the Parties*

The Employer contends that the disputed work should be assigned to employees represented by the Decorators based on their collective-bargaining agreement, its preference, the area practice outside the Convention Center, and its own past practice. The Employer claims its past practice has been to assign 90 percent of the disputed work to employees represented by the Decorators and to use employees represented by the Carpenters only when requested by the customer or carpentry skills are required.

The Decorators contends that the disputed work has always been the work of employees it represents and is specifically covered by its collective-bargaining agreement with the Employer. The Decorators further contends that the work should be awarded to employees it represents based on the Employer's preference and past practice and the area and industry practice.

The Carpenters contends that the work is covered by its collective-bargaining agreement and that it only recently became aware that the Employer was using employees represented by the Decorators. The Carpenters contends that the work should be awarded to employees it represents based on its collective-bargaining agreement, the Employer's past practice, and area and industry practice.

D. *Applicability of the Statute*

As noted above, the Decorators, on October 11, 1990, threatened the Employer with work stoppages in order to force the Employer to continue to assign the disputed work to employees it represents.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certifications and collective-bargaining agreements

There is no evidence that the Board has certified either the Decorators or the Carpenters as the collective-bargaining representative of the Employer's employees.

The relevant portion of the Decorators' collective-bargaining agreement with the Employer, effective April 1, 1989, until March 31, 1993, states that the following work shall come under the Decorators' jurisdiction:

> The erection and dismantling of pipe and drape work, prefabricated displays, floats, decorative signs and banners, flags and bunting, and any other display work used for conventions, parties, banquets, parades and events of such nature.

The Carpenters has a collective-bargaining agreement with the Employer, effective August 1, 1989, until July 31, 1993, that covers the carpenters in its maintenance shop. It provides, ''United agrees that work performed outside the shop shall be done in accordance with the Local Jurisdiction, in accordance with past practice.'' This language appears to refer to the fact that shop carpenters are permitted on occasion to work outside the shop and that the Employer agreed to pay them at the higher ''outside rate.''

The Carpenters argues that a one-page document called ''Agreement'' dated April 27, 1970, also supports its claim for the work. This document contains no indication as to duration and does not discuss the work to be performed. Two copies of the document were introduced into evidence, one of which had a type written addition at the top stating, ''Note: This agreement was cancelled by the UBC because contractor did not sign the updated agreement.'' The Employer claimed that it had no knowledge of this agreement, and the addition at the top was never satisfactorily explained.

Because the Decorators' collective-bargaining agreement, but not the Carpenters', specifically defines jurisdiction and covers the disputed work, we find that this factor favors an award of the disputed work to employees represented by the Decorators.

2. Employer preference

The Employer's witness testified that the Employer has assigned the disputed work to employees represented by the Decorators for 30 years and that it pre-

[2] The Employer does not erect or dismantle exhibits and displays at the Atlantic City Convention Center. This work is retained by the Convention Center which utilizes employees represented by the Carpenters to perform it. The award of this work was the subject of a previous Board decision. *Carpenters Local 623 (Atlantic Exhibit)*, 274 NLRB 71 (1985). The work at the Convention Center is not part of the disputed work.

fers to continue to assign the work to those employees. Accordingly, we find that this factor favors an award of the disputed work to employees represented by the Decorators.

3. Employer past practice

The Employer's representative testified that its past practice was to assign 90 percent of the disputed work to employees represented by the Decorators, and the Decorators' witness corroborated this testimony. The Carpenters claims that the Employer's past practice has been to assign the work to employees it represents and that it was not aware that the Employer was assigning some of the disputed work to employees represented by the Decorators. The documentary evidence indicates that the Employer has assigned the work to employees represented by the Decorators about half the time and to employees represented by the Carpenters about half the time. Thus, we find that this factor is inconclusive.

4. Area and industry practice

The industry practice is a matter of local custom. Employees represented by the Decorators perform the disputed work in Phoenix, Houston, Miami, Milwaukee, Kansas City, Los Angeles, and San Francisco. Employees represented by the Carpenters perform the work in Atlanta, Cleveland, Chicago, Philadelphia, Washington, and New York. Employees represented by other unions perform the work in certain other cities. Therefore, we find that the industry practice is inconclusive.

The work at the Atlantic City Convention Center is performed by the Carpenters under a collective-bargaining agreement with the Convention Center Authority.[3] Except for this special situation, almost all the remaining Atlantic City work is performed by employees represented by the Decorators. The prevailing area practice, therefore, favors an award of the disputed work to employees represented by the Decorators.

[3] See fn. 1.

5. Relative skills

Erecting and dismantling the displays and exhibits is semiskilled work requiring the use of screwdrivers, wrenches, drills, and clamps. The panels generally are put together with screws, bolts, and wingnuts. The employees represented by either Union have the skills to perform the work. Consequently, we find this factor inconclusive.

6. Economy and efficiency of operation

No evidence was presented concerning this factor.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local Union 1447, Sign-Pictorial and Displaymen, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO, are entitled to perform the disputed work. We reach this conclusion relying on the Decorators' collective-bargaining agreement, the Employer's preference, and the area practice.

In making this determination, we are awarding the work to employees represented by Local Union 1447, Sign-Pictorial and Displaymen, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO, not to that Union or its members.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees represented by Local Union 1447, Sign-Pictorial and Displaymen, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO, are entitled to perform the work of erecting and dismantling of exhibits and displays by United Exposition Services Co., Inc. in the Atlantic City, New Jersey area, except for that performed at the Atlantic City Convention Center.